Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No._____

IN THE SUPREME COURT OF THE UNITED STATES

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Yuki Kobayashi,
Petitioner,
vs.
Vaino Spencer, Reuben A. Ortega, Miriam A.Vogel,
Joan D. Klein, Patti S.Kitching, H.Walter Croskey,
Richard Dennis Aldrich, Charles Vogel, Norman L. Epstein,
Alexander H. Williams III, Peter D. Lichtman,
Stephen A. Lachs, Robert H. O'Brien, Robert W. Parkin,
Victor E. Chavez and County of Los Angeles,
Respondents.

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On Petition for a Writ of Certiorari to
the United States Court of Appeals For the Ninth Circuit

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# PETITION FOR A WRIT OF CERTIORARI

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Yuki Kobayashi
1526 3rd Ave., #7
Los Angeles, CA 90019
Phone:(323)734-4815
Petitioner In Pro Se

18 pp

# QUESTIONS PRESENTED

The questions presented are:

1. Whether the Rooker-Feldman doctrine as described in *Branson v. Nott,* 62 F.3d 287, 291 (9th Cir. 1995) bars an injunctive or equitable relief brought under 42 USC Sec.1983 against a state judge who in his judicial capacity willfully, arbitrarily, maliciously and consistently disregards law and fact, discriminates against a citizen and deprives him of his constitutional rights based on his race or pro se status even though no damage or review of state court proceeding is sought and declaratory relief was unavailable.

2. Whether state judges are immune from any kind of action or lawsuit under 42 USC Sec.1983 or any other provision of law in federal court so that they are free to willfully, arbitrarily, maliciously and consistently disregard law and fact, discriminate against a citizen and deprive him of his constitutional rights based on his race or pro se status.

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Petitioner Yuki Kobayashi respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

1. OPINIONS BELOW

The memorandum opinion of the Court of Appeals [App. a1] is unreported. It affirms the judgment of the United States District Court for the Central District of California. The pinion of the District Court is also unreported [App. a3].

2. JURISDICTION

The Court of Appeals entered its judgment on November 18, 1999 [App. a1]. This petition is filed within 90 days of that date. The jurisdiction of this Court is invoked under 28 USC Sec.1254(1).

3. STATUTES AND CONSTITUTION INVOLVED

42 USC Sec.1983 provides that:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable."

4. STATEMENT OF THE CASE

Petitioner was and is of non-white race and has been proceeding in both state and federal courts in pro se due to his inability to hire an attorney for economic reasons.

Petitioner filed an injunction action, without seeking any damage or review of state court proceeding, in the U.S. District Court for the Central District of California to enjoin certain

state trial and appellate judges from ruling, hearing or trying any matter in any action involving petitioner as a party.

The complaint alleged that these state judges have been stereotyped to willfully, arbitrarily, maliciously and consistently discriminate against disadvantaged parties of non-white minority races, such as this petitioner, who could not afford to hire an attorney; They intentionally abused judicial power by deciding issues arbitrarily disregarding the laws and facts favorable to the parties, consistently and systematically ruling against the parties by all means, dismissing actions and appeals in favor of opponent parties who had an attorney, etc.; These deliberate, unlawful, gross, culpable, arbitrary and capricious actions were done under color of state law and in their official capacity willfully, knowingly and maliciously intending to punish or discourage non-white race parties in pro se; Because of such unlawful discrimination, our justice system is so sick and in corrupt that parties, including this petitioner, with disadvantaged socioeconomic status could not and cannot have a fair and impartial hearing or trial before these state judges; and declaratory relief was unavailable.

4.1 The District Court Decision

The U.S. District Court for the Central District of California dismissed the action [App. a2, a3] for lack of subject matter jurisdiction over the action applying the Rooker-Feldman doctrine as described in *Branson v. Nott*, 62 F.3d 287, 291 (9th Cir. 1995). Petitioner contended that the Rooker-Feldman doctrine does not apply because no review of a judgement or order of state courts was requested and no damage was requested and that abusive acts of state judges could be proved without reviewing any judgment or order of state courts.

4.2 Jurisdiction of the District Court

The jurisdiction of the District Court was based upon 28 USC Secs.1331, 1343 (a)(3), and upon the supplemental jurisdiction under state law.

4.3 The Court of Appeals Decision

The Court of Appeals for the Ninth Circuit affirmed [App. a1] the judgment of dismissal of the District Court based on the Rooker-Feldman doctrine as described in *Branson*, supra.

The Court of Appeals had jurisdiction under 28 USC Sec.1291.

## 5. REASONS FOR GRANTING THIS PETITION

5.1 The Court of Appeals has decided an important federal question in a way that conflicts with relevant decisions of this Supreme Court.

This Supreme Court has determined that Congress enacted 42 USC Sec.1983 to provide an independent avenue for protection of federal constitutional rights of citizens; The remedy was considered necessary because state courts were being used to harass and injure citizens, either because the state courts were powerless to stop deprivations or were in league with those who were bent upon abrogation of federally protected rights; Subsequent interpretations of the Civil Rights Acts by this Court acknowledge the Congress' intent to reach unconstitutional actions by all state actors, including judges; Since a State acts only by its legislative, executive, or judicial authorities, the constitutional provision must be addressed to those authorities, including the State's judges; We conclude that judicial immunity is not a bar to prospective injunctive relief against a judicial officer acting in her judicial capacity [*Pulliam v. Allen* 466 U.S. 522 540-543, 104 S.Ct. 1970 (1984); *Supreme Court of Va. v. Consumers Union* 446 U.S. 719 735-736 fn14 (1979)].

Despite this clear determination by this Court, the Court of appeals determined that the Rooker-Feldman doctrine as described in *Branson v. Nott*, supra, bars an injunctive or equitable relief brought under 42 USC 1983 against a state judge [App. a1]. Such decision is a total distortion of this Court's determination discussed above.

Therefore, the Court of Appeals has decided the important federal question of a civil right action against abusive state judges in a way that conflicts with the decisions of this Court. This Court should review and reverse the decision below.

5.2 The Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Supreme Court.

As discussed above, the Court of Appeals applied the Rooker-Feldman doctrine to bar an injunctive or equitable relief brought under 42 U.S.C. 1983 against a state judge [App. a1]. This Court, or any other Court of Appeals, has never considered such application and thus it should be settled by this Court.

5.3 The Court of Appeals has entered a decision in conflict with the decision of another Court of Appeals on the same important matter.

The Seventh Circuit Court of Appeals has stated:

> "Of course a deprivation of liberty or a denial of the equal protection of the laws is actionable even if inflicted by the state's judicial branch rather than as in the usual case by its legislature or its executive officers. The absolute immunity that state judges enjoy from federal civil rights suits, when the judge is performing judicial duties, is limited to damage actions; It does not preclude injunctive suits aimed at restraining judges from depriving persons of their federal rights." [*Lynk v. LaPorte Superior Court No.2* (7th Cir. 1986) 789 F.2d 554, 560].

Because Petitioner's complaint did not seek any damage, but rather sought injunctive relief, the decision of the Ninth Circuit Court of Appeals is in conflict with the decision of the Seventh Circuit Court of Appeals on the same important matter.

5.4 The decision of the Court of Appeals is erroneous.

The Rooker-Feldman doctrine precludes district courts from reviewing final judgments of state courts [*Branson*, supra]. However, Petitioner's complaint did not seek review of any final judgment or any other order of state courts, the application of the doctrine by the court below was an error.

In addition, because 42 USC 1983 is designed to provide an independent avenue for protection of federal constitutional

rights of citizens even against state judges, [Pulliam, supra], the decision of the Court of Appeals baring Petitioner's injunctive relief is indeed in error. This Court should grant this petition to correct these serious and critical errors of the Court of Appeals.

5.5 The question presented is important.

"Justice according to the law and fact" is fundamentally important to every citizen of California as well as other states. This issue has now become no less important than the segregation against negroes which lasted more than 200 years in this nation. Since the establishment of the stereotyped doctrine of "separate but equal" in 1896 [*Plessy v. Ferguson* 163 U.S. 537 (1896)], this Court, consisting of all white judges, has refused to abandon the discriminatory doctrine for 58 years [*Brown v. Board of Education of Topeka,* 347 U.S. 483 (1954)].

It is unfortunate, but a reality, that the majority of judges are still of white race. Tens and hundreds of millions of citizens are so poor that they cannot afford to hire attorneys in civil actions and are being forced to represent themselves in court. The majority of these disadvantaged citizens are black, hispanic, asian and other minority race people. The protection of these minority races and pro se litigants from abusive state judges who willfully, arbitrarily, maliciously and consistently disregard law and fact, discriminate against a citizen and deprive him of his constitutional rights based on his race or pro se status is extremely important in the present society. There is no justice for the poor so long as state judges abuse power.

As demonstrated in the recent case of O.J.Simpson's criminal trial, litigations have become a money-game, richman's game, where richmen win and poormen lose because poormen cannot hire a good attorney or in civil cases even any attorney. So long as the justice is based on an adversary system, resourceful richmen have always an unfair advantage over the poormen who cannot afford to hire an attorney. This unfair situation is aggravated by abusive state judges who are in league with those richmen who are bent upon abrogation of federally protected rights against poormen. Therefore, this petition involves an extremely important public interest affecting millions of citizens of this nation.

## 6. CONCLUSION

Lacking any rational or principled basis of support, the decision below is clearly contrary to this Court's decisions. It demonstrates so compelling a need or the exercise of this Court's power of supervision that it should be reversed on the issues presented in this petition. Each day that the decision is allowed to stand, its strange logic and egregious misstatements of the law will work predictable mischief and millions of poormen in this nation cannot get justice. This very American civilization is at issue.

This petition for a writ of certiorari should be granted.

Respectfully submitted,

February 10, 2000

Yuki Kobayashi
Petitioner In Pro Se

Filed on NOV 18 1999, Cathy A. Catterson
NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

| | |
|---|---|
| Yuki Kobayashi, Plaintiff-Appellant, | ) No.99-55051 ) D.C.No.CV-98-04887-LGB(RZ) |
| v. | ) |
| Vaino Spencer, et al., Defendants-Appellees. | ) MEMORANDUM |

Appeal from the United States District Court
for the Central District of California
Lourdes G. Baird, District Judge, Presiding
Submitted November 15, 1999

Before: Wallace, Farris, and T.G. Nelson, Circuit Judges.

Yuki Kobayashi appeals pro se the district court's judgment dismissing without prejudice his action under 42 U.S.C. Sec.1983 alleging that various state and county judges, the State of California, and the County of Los Angeles deprived him of due process because of his race and pro se status. We have
jurisdiction under 28 U.S.C. Sec.1291. We review de novo the district court's dismissal, see *Branson v. Nott*, 62 F.3d 287, 291 (9th Cir. 1995), and we affirm.

Because Kobayashi's action was an impermissible collateral attack against prior state court proceedings, the district court properly dismissed the action without leave to amend for lack of subject matter jurisdiction. See id.

We conclude that the district court did not abuse its discretion by denying Kobayashi's motion to disqualify the magistrate judge. See *Yagman v. Republic Ins.*, 987 F.2d 622, 626 (9th Cir. 1993).

AFFIRMED.

* * * * *

Entered on OCT 28 1998

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

| | |
|---|---|
| Yuki Kobayashi, Plaintiff, | ) CASE NO.CV-98-04887-LGB(RZ) |
| v. | ) JUDGMENT |
| Vaino Spencer, et al., Defendants. | ) |

The Court, having accepted the Report and Recommendation of United States Magistrate Judge dated September 11, 1998,

IT IS ORDERED AND ADJUDGED that the action is dismissed without prejudice for lack of subject matter jurisdiction.

Dated: October 26, 1998

LOURDES G. BAIRD
United States District Judge

* * * * *

Filed on SEP 11 1998

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

| | |
|---|---|
| Yuki Kobayashi, Plaintiff, | ) CASE NO.CV-98-04887-LGB(RZ) |
| v. | ) REPORT AND RECOMMENDATION |
| | ) OF UNITED STATES MAGISTRATE |
| Vaino Spencer, et al.., Defendants. | ) JUDGE |

Pursuant to 28 U.S.C. Sec.636 and General Order 194 of the United States District Court for the Central District of California, the undersigned submits this Report and Recommendation to the Honorable Lourdes G. Baird, United States District Judge. The undersigned recommends that the Court dismiss the action without prejudice because the Court lacks subject matter jurisdiction over the action.

I.

Plaintiff Yuki Kobayashi filed this action pursuant to 42 U.S.C. Sec.1983, alleging civil rights violations by several Superior Court and State Court of Appeal judges. In general allegations, Kobayashi asserts that the named defendants, as well as the County of Los Angeles and the State of California, denied him due process as a result of his race and pro se status. All of the defendants were judges in matters in which the plaintiff either was a party, or was a member of a putative class in a class action. He alleges that the defendants made their rulings and decisions arbitrarily, and that those decisions were the result of prejudices against him because of his race and inability to afford an attorney.

In his specific allegations, Kobayashi references particular cases in which the named California Court of Appeal justices ruled against him, by dismissing appeals, denying writ petitions and petitions for rehearing, and refusing to recuse themselves. Complaint, Parags.27, 29, and 30. As for the lower court judges, Kobayashi complains that they wrongfully declined to disqualify themselves, dismissed actions, quashed service of process, struck out cost memoranda, denied ex parte temporary

restraining orders and injunctions, denied a demand for jury trial, struck affirmative defenses, and entered a Judgement of Eviction. Complaint, Parags.28, 29 and 31.

The State of California and the County of Los Angeles each is said to be liable by virtue of respondeat superior for the actions of the judges employed by them.

Attempts to disqualify judges form a frequent motif for Kobayashi's litigation. The Complaint references at least eight attempts to disqualify judges in the California courts. The Court also notes that Kobayashi filed a motion to disqualify the undersigned in the present case, and takes judicial notice, pursuant to Fed. Rules Evid. 201, of motions to disqualify the undersigned in two other cases. *Yuki Kobayashi v. Guoan. et al.*, Case No.CV 98-0970 DT (RZ) (Order Denying Plaintiff's Motion for Disqualification of Magistrate Judge Ralph Zarefsky and Denying Plaintiff's Request to Strike and Vacate the First Interim Report and Recommendation, filed August 31, 1998); *Koichi Matsumoto and Yuki Kobayashi v. Coudert Brothers, et al.*, Case No.CV 98-4623 WDK (RZ) (motion to disqualify set for hearing October 5, 1998).

Kobayashi does not seek damages in the present action; he only seeks injunctive relief in the form of a temporary restraining order, a preliminary injunction and a permanent injunction precluding the named defendants from adjudicating or presiding over any matter presently involving Kobayashi as a party or in any future matter involving Kobayashi as a party. On June 24, 1998, the District Judge denied Kobayashi's application for a temporary restraining order.

II.

All defendants except for Judge Isacoff of the Municipal Court have moved for dismissal. The State of California and the Court of Appeal judges have moved to dismiss for failure to state a claim for which relief can be granted. They also argue that the District Court should apply the doctrines of abstention set forth in *Younger v. Harris*, 401 U.S. 37 (1971) or *Railroad Commission v. Pullman*, 312 U.S. 496 (1941). Alternatively, they argue that the Anti-Injunction Act, 28 U.S.C. Sec.2283, bars this action for injunctive relief. Finally, they argue that the Eleventh Amendment grants immunity to the State of California, barring the action against the State.

In a separate motion, the County of Los Angeles and the Superior Court judges argue that this Court lacks subject matter jurisdiction under the Rooker-Feldman doctrine, which prohibits federal district courts from reviewing state court decisions. Alternatively, they argue that the complaint is vague and ambiguous and fails to state a claim for which relief can be granted. They also argue that judicial immunity bars the action. In the alternative, these defendants move for a more definite statement.

The motions came on for hearing on September 9, 1998. Plaintiff Yuki Kobayashi appeared pro se. The County defendants appeared through their counsel Elizabeth Friedman. The State defendants did not appear through counsel, but Plaintiff stated on the record that he did not oppose the Court's taking the motion under submission.

III.

In any federal action, the first question must be whether the Court has jurisdiction over the subject matter of the action. The Court has a duty to examine this issue sua sponte even if the parties do not raise it. *Susan Cripps, et al. v. Life Insurance Co. of North America,* 980 F.2d 1261, 1264 (9th Cir. 1992). Both moving parties have raised the issue of subject matter jurisdiction, although in different ways. In addition, the Court's analysis of subject matter jurisdiction applies to the claim against Judge Isacoff, even though Judge Isacoff has not appeared in the action, for subject matter jurisdiction cannot be created by default.

The Rooker-Feldman doctrine provides that a federal district court does not have authority to review a state court decision. *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 476&486 (1983); *Rooker v. Fidelity Trust Co.,* 263 U.S. 413, 316 (1923); *Branson v. Nott,* 62 F.3d 287. 291 (9th Cir.), cert. denied, 116 S.Ct. 565 (1995). Review of state court decisions may only be conducted in the United States Supreme Court. *Feldman,* 460 U.S at 476&486; *Rooker,* 263 U.S. at 416: see 28 U.S.C. Sec.1257.

The Rooker-Feldman jurisdictional bar applies even if the complaint raises federal constitutional issues. *Feldman,* 460 U.S. at 483 n.16&486; *Branson,* 62 F.3d at 291. More specifically, the bar applies if the challenge to the state court decision

is brought as a section 1983 civil rights action alleging violations of due process and equal protection. See *Branson*, 62 F.3d at 291. A complaint challenges a state court decision if the constitutional claims presented to the district court are "inextricably intertwined with the state court's decision in a judicial proceeding." *Feldman*, 460 U.S. at 483 n.16; *Dubinka v. Judges of Superior Court*, 23 F.3d 218, 221 (9th Cir. 1994).

On the other hand, a federal court does have jurisdiction to consider a "general" constitutional challenge that does not require review of a state court decision in a particular case. *Dubinka*, 23 F.3d at 221. "This distinction between a permissible general constitutional challenge and an impermissible appeal of a state court determination may be subtle, and difficult to make." id. In *Feldman*, the Supreme Court held that the federal court had jurisdiction to consider the constitutionality of a state bar rule, but lacked jurisdiction to consider the application of the rule in a particular case. *Feldman*, 460 U.S. at 486; see also *Mullins v. Oregon*, 57 F.3d 789, 792 (9th Cir. 1995) (holding that court had jurisdiction to consider claim that state's adoption procedures violated plaintiffs' due process liberty interests).

Here, Kobayashi alleges that the judicial rulings handed down by the defendants denied him due process under color of state law. The essence of Kobayashi's claim is that the rulings themselves violated his constitutional rights, because they were the result of judicial bias. In order for this Court to assert jurisdiction over the matter, it must review the state judges' decisions. "[T]he federal claim is inextricably intertwined with the state court judgement if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it." *Pennzoil Company v. Texaco, Inc.*, 481 U.S. 1, 25 (1987) (Marshall, J., concurring); *Busch v. Torres*, 905 F.Supp. 766, 771 (C.D. Cal 1995). In order for Kobayashi to prevail, he must show that the judges improperly refused to recuse themselves, or made erroneous decisions in their rulings. This is essentially a review of the state courts' decisions. The United States Supreme Court is the only federal court with jurisdiction to review state court decisions. *Feldman*, 460 U.S. at 476&486; *Rooker*, 263 U.S. at 416; see 28 U.S.C.Sec.1257.

The Ninth Circuit's decision in *Branson v. Nott* is particularly apt here. In *Branson* the plaintiff sued California appellate court justices and Superior Court judges who had ruled against him. He asserted a claim against them arising under 42 U.S.C. Sec.1983. He charged that various of their rulings, including the unpublished opinion by the Court of Appeal, deprived him of due process of law. In the underlying action, he also had asserted that the Superior Court judge should recuse himself.

Although the District Court dismissed *Branson* because it was barred by the statute of limitations, the Ninth Circuit, acting under the doctrine that it may affirm a dismissal on the basis of any matter presented by the record, affirmed on the basis of lack of subject matter jurisdiction. 62 F.3d at 291. The Court noted that federal district courts lack authority to review final determinations of state courts, and that "[n]otwithstanding his protestations to the contrary, *Branson*'s Sec.1983 claim amounts to nothing more than an impermissible collateral attack on prior state court decisions." Id. (citation omitted). Accordingly, the Court of Appeals ruled that dismissal was proper because the District Court lacked subject matter jurisdiction. 62 F.3d at 292.

*Branson v. Nott,* itself an application of the Rooker-Feldman doctrine, controls this action. Kobayashi complains of specific rulings made by specific state court judicial officers. If the Court were to adjudicate the matters pleaded, it would in fact be reviewing the state court rulings. The fact that Kobayashi seeks only injunctive relief does not change this analysis; injunction is a remedy, not a separate claim for relief. Thus, the Court lacks subject matter jurisdiction over the action.

IV.

The plaintiff names the State of California as a defendant in his Sec.1983 claim. A suit in which the State is named as the defendant is proscribed by the Eleventh Amendment, absent waiver or congressional abrogation. See *Pennhurst State School & Hosp. v. Halderman,* 465 U.S. 89, 100 (1984). California has not waived its immunity from Sec.1983 claims, see *Mitchell v. Los Angeles Community College Dist.,* 861 F.2d 198, 201 (9th Cir. 1988), nor did Congress intend to abrogate the States' Eleventh Amendment immunity in passing Sec.1983. See *Quern v. Jordan,* 440 U.S. 332, 341 (1979).

The Eleventh Amendment is a bar to the plaintiff's section 1983 claim against the State of California. At oral argument, Kobayashi conceded that the Eleventh Amendment bars the claim against the State of California.

V.

Because the Court rules on the basis that it lacks subject matter jurisdiction, it is unnecessary to devote much time to the other arguments of the defendants. However, the Court notes that if it had subject matter jurisdiction, then the abstention doctrine of *Younger v. Harris* might well apply. Younger abstention is appropriate when: (1) the state proceedings are ongoing; (2) the proceedings implicate important state interests; and (3) the state proceedings provide an adequate opportunity to raise federal questions. *Middlesex County Ethics Comm'n*, 457 U.S. at 432. *Kenneally v. Lungren*, 967 F.2d 329, 331 (9th Cir. 1992), cert. denied, 113 S.Ct. 979 (1993); *World Famous Drinking Emporium, Inc.*, 820 F.2d at 1082. Each of those standards appears to be satisfied here. The Court also notes that, if it had jurisdiction, the Complaint would fail to state a claim at least against the County, because there is no respondeat Superior liability under 42 U.S.C. Sec.1983. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). But the Court need not reach those issues, nor the other issues addressed by the defendants' motions, because the Court lacks subject matter jurisdiction over the entire action.

VI.

For the foregoing reasons, IT IS RECOMMENDED that the Court (1) accept this Report and adopt it as its findings and conclusions; and (2) enter Judgment dismissing the action without prejudice for lack of subject matter jurisdiction.

Dated: September 11, 1998

RALPH ZAREFSKY
United States Magistrate Judge

* * * * *

Supreme Court, U.S.
FILED
MAR 20 2000
CLERK

(2)

No. 99-1381

IN THE
**SUPREME COURT OF THE UNITED STATES**
OCTOBER TERM, 1999

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YUKI KOBAYASHI,

Petitioner,

vs.

VAINO SPENCER, REUBEN A. ORTEGA, MIRIAM A. VOGEL, JOAN D. KLEIN, PATTI S. KITCHING, H. WALTER CROSKEY, RICHARD DENNIS ALDRICH, CHARLES VOGEL, NORMAN L. EPSTEIN, ALEXANDER H. WILLIAMS, III, PETER D. LICHTMAN, STEPHEN A LACHS, ROBERT H. O'BRIEN, ROBERT W. PARKIN, VICTOR E. CHAVEZ, and COUNTY OF LOS ANGELES,

Respondents.

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**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

# BRIEF FOR RESPONDENTS

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1 cpp

## QUESTION PRESENTED

DOES THE FEDERAL DISTRICT COURT HAVE SUBJECT MATTER JURISDICTION OVER FINAL DETERMINATIONS OF A STATE COURT IN JUDICIAL PROCEEDINGS?

## PARTIES TO THE PROCEEDINGS

Petitioner YUKI KOBAYASHI is an individual proceeding in Pro Se.

Respondents ALEXANDER WILLIAMS, III, PETER H. LICHTMAN, STEVEN D. LACHS, ROBERT O'BRIEN, ROBERT PARKIN and VICTOR E. CHAVEZ are County of Los Angeles Superior Court judicial officers who were sued by petitioner in their individual capacity. Claims against each arise out of conduct occurring in the exercise of their official judicial capacity.

Respondent COUNTY OF LOS ANGELES, is a municipal entity and was sued as such. 42 U.S.C. Section 1983 claims against this respondent are based on a theory of respondeat superior relating to the complained of specific acts by the above-named judges.

Respondents VAINO SPENCER, REUBEN A. ORTEGA, MIRIAM A. VOGEL, JOAN D. KLEIN, PATTI S. KITCHING, H. WALTER CROSKEY, RICHARD DENNIS ALDRICH, CHARLES VOGEL, and NORMAN L. EPSTEIN are California Court of Appeal justices. Claims against each arise out of conduct occurring in the exercise of their official judicial capacity.

Respondent STATE OF CALIFORNIA, is a sovereign state and was sued as such. 42 U.S.C. Section 1983 claims against this respondent are based on a theory of respondeat superior relating to the complained of specific acts by the above-named appellate court justices.

The issues raised on appeal to the 9th Circuit did not address the sufficiency of service of process on County of Los Angeles Municipal[1] Court Judge Susan Isacoff who did not make a general appearance at the proceedings in the district court. Accordingly, the Petition does not raise any issue with respect to Judge Isacoff individually and she is therefore omitted from the list of respondents.

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[1] Since the filing of this Petition Superior and Municipal courts for the County of Los Angeles, State of California have been consolidated. The Municipal Court no longer is a recognized jurisdictional entity.

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# STATEMENT OF JURISDICTION

This Honorable Court's jurisdiction on a writ of certiorari is enumerated in Rule 10 of the Rules of the Supreme Court of the United States. It is clearly stated "A petition for a writ of certiorari will only be granted for compelling reasons." Respondent asserts herein that the issues raised in the petition are not issues of great legal importance and there is no compelling reason to grant the within Petition and it should be denied.

# STATEMENT OF THE CASE

PROCEDURAL HISTORY

On June 17, 1998, Petitioner filed a Complaint seeking injunctive relief against several California State Superior Court Judges and one Municipal Court Judge as well as several California State Court of Appeal Justices.

The Complaint seeks relief for an alleged erroneous proceedings which took place in three state suits, one arising out a class action in which Petitioner was an unnamed plaintiff class member. It is Petitioner's claim that he suffered discrimination by the state judges based on his socioeconomic status, race and pro per status all in violation of his 5th and 14th Amendment Rights. The relief requested by Petitioner seeks to have the federal District Court enjoin and restrain state judges from violating codes of California State Cannon of Judicial Ethics and to enjoin said state judges from hearing any pending or future cases in which Petitioner is a party.

On July 9, 1998 Respondents, COUNTY OF LOS ANGELES, ALEXANDER WILLIAMS, III, PETER H. LICHTMAN, STEVEN D. LACHS, ROBERT O'BRIEN, ROBERT PARKIN and VICTOR E. CHAVEZ filed a Motion to Dismiss the Complaint for lack of subject matter jurisdiction, judicial immunity or in the alternative for a more definite statement.

On August 4, 1998 Petitioner filed a Motion to Disqualify Magistrate Judge Ralph Zarefsky.

On August 12, 1998 Judge Lourdes G. Baird denied Petitioner's Motion to Disqualify Magistrate Judge Ralph Zarefsky.

On October 27, 1998 Judge Lourdes G. Baird accepted the Report and Recommendation issued by Judge Ralph Zarefsky and dismissed the action without prejudice for lack of subject matter jurisdiction.

On November 30, 1998, Petitioner filed a timely Notice of Appeal.

On November 18, 1999, the 9th Circuit Court of Appeals affirmed the District Court's dismissal.

On February 15, 2000, petitioner filed the instant petition for writ of certiorari.

STATEMENT OF FACTS

Causes of action as to Respondents Judge Lachs and Judge Lichtman concern Los Angeles Superior Court Case No. BC073320 (Matsumoto, et.al. v. Gotcher, et.al.).

Petitioner avers that Judge Lachs refused to act on an Affidavit of Prejudice (it is unclear from the underlying Complaint in what format the plaintiffs' sought to disqualify Judge Lachs in the state action) filed against him in a timely manner.

Petitioner claims Judge Lichtman refused to strike a Memorandum of Costs on Appeal; entered an award of costs against a non-appearing plaintiff; and refused to act on an Affidavit of Prejudice pursuant to California Code of Civil Procedure § 170.3(c)(1) (hereinafter referred to as CCP) filed against him in a timely manner.

Causes of action as to Respondents' Judge O'Brien, Judge Parkin, Judge Chavez and Judge Williams concern Los Angeles Superior Court Case Nos. BC170895 (Kobayashi v. Aleman); B118104 and B118640.

Petitioner claims Judge O'Brien "unlawfully denied plaintiff's Ex Parte Application for TRO relief."

Petitioner claims Judge Parkin "unlawfully struck plaintiff's Statement of Disqualification against Judge Horowitz ."

Petitioner claims Judge Chavez "unlawfully denied plaintiff's Motion to Strike Judge Parkin's Order."

Petitioner claims Judge Williams "passed upon his own disqualification . . . in violation of CCP § 170.3(c)(5).

## ARGUMENT FOR DENYING WRIT

### I

### THERE IS NO JURISDICTIONAL BASIS FOR THE SUPREME COURT TO GRANT DE NOVO REVIEW OF THE LEGAL DETERMINATIONS MADE BY THE DISTRICT COURT AND UPHELD BY THE 9TH CIRCUIT COURT OF APPEALS.

Petitioner seeks de novo review of the District Court's dismissal of his1983 action for lack of subject matter jurisdiction in which he alleged a denial of his constitutional rights arising out of judicial inaction/conduct attendant to three different state trial court proceedings, namely (1) refusing to accept/file affidavits disqualifying state judges; (2) denial of petitioner's application for the issuance of temporary restraining orders; and (3) the dismissal of a class action suit, in which petitioner was an unnamed class member.

Whether subject matter jurisdiction exists is a question of law. Federal district courts have no authority to review the final determinations of a state court judicial proceeding. *District of Columbia Court of Appeals v. Feldman*, (1983) 460 U.S. 462,482, 103 S.Ct 1303.

## A. THERE IS NO CONFLICT BETWEEN STATE AND FEDERAL LAW.

There is no conflict between state and federal law presented in this petition.

## B. THERE IS NO ISSUE OF CONFLICTING CIRCUIT OPINIONS.

There are no conflicting circuit opinions on the issue of lack of subject matter jurisdiction over a collateral attack against prior state court proceedings.

The case cited by petitioner *Lynk v. Laporte Superior Court*, 789 F.2d 554 (7th Cir. 1986) is case specific as Lynk had "no procedures open to him under state law..."after the state court refused to entertain his divorce proceedings without a personal appearance and also refused to remove him from state prison for the purpose of appearing at his divorce proceedings. *Id* at 560. This Court aptly noted a fundamental denial of due process and Lynk was able to demonstrate that he lacked an adequate remedy at law, thus the extraordinary remedy of injunctive relief by a federal court over state judicial proceedings was warranted.

The instant petition does not raise the deprivation of a federal right or due process violation, although labeled as such. Petitioner plainly seeks to prospectively enjoin state judicial officers based on previous adverse rulings. "An adverse judgment, even one that is you erroneous as a matter of State for even federal law, is not a denial of due process."*Lynk v. Laporte Superior Court*, *supra* at 563-564.

### C. THE COURT OF APPEAL DECISION DOES NOT CONFLICT WITH DECISIONS BY THIS COURT.

The district court's ruling is not in conflict with decisions of this Court. The district court ruling was limited to a finding that based on the alleged deprivation of rights. Those enumerated by Petitioner were in fact final determinations of a state court in judicial proceedings. The district court found that the substance of petitioners 1983 action amounted to nothing more than an impermissible collateral attack on prior state court decisions, and based on that legal determination, found that the court had no subject matter jurisdiction.

## II.

## THE DISTRICT COURT AS UPHELD BY THE COURT OF APPEALS CORRECTLY DISMISSED PETITIONER'S 1983 ACTION FOR LACK OF SUBJECT MATTER JURISDICTION

### A. THE FEDERAL DISTRICT COURT LACKED SUBJECT MATTER JURISDICTION.

Under Rule 12(b)(1)and 12(b)(6) of the *Federal Rules of Civil Procedure*, the court may dismiss an action for lack of subject matter jurisdiction. Federal subject matter jurisdiction must exist at the time the action is commenced. *Morongo Band of Mission Indians v. California State Board of Equalization, 858 F.2d 1376 (9th Cir.1988).*

As courts of original jurisdiction, federal district courts have no authority to review the final determinations of a state court in judicial proceedings. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462,482, 103 S.Ct 1303 (1983) *Worldwide Church of God v. McNair*, 805 F.2d 888,890 (9th Cir.1986) This is true even when the challenge to a state court decision involves federal constitutional issues. *Branson v. Nott*, 62 F.3d 287 (9th Cir.1994) citing *Feldman, Id,* at 484-86 and *Worldwide Church of God, Id*, at 891.

Whether subject matter jurisdiction exists is a question of law. *Nike, Inc. v. Comercial Iberica De Exclusivas Deportivas, S.A.*, 20 F.3d 987, 990 (9th Cir.1994)

B. ABSTENTION DOCTRINE REQUIRED DISMISSAL.

Under the holdings in *Younger v. Harris*, 40 U.S. 37 (1971) and *Railroad Commission v. Pullman*, 312 U.S. 496 (1941) the abstention doctrine applies to bar the underlying action brought by Petitioner.

Abstention is appropriate in this matter because the underlying action involves state interests, and the state forum provides an adequate opportunity to raise federal issues. *Middlesex County Ethics Commission v. Garden State Bar Association*, 457 U.S. 432 (1982). *Kenneally v. Lungren*, 967 F.2d 329, 331 (9th Cir. 1992), *cert.denied*, 113 S.Ct 979 (1993) *World Famous Drinking Emporium, Inc.*, 820 F.2d 1079.

C. COMMITY REQUIRED DISMISSAL.

Federal Courts are prohibited from reviewing state court decisions. The exclusive jurisdiction for such review is the United State Supreme Court. *Rooker v. Fidelity Trust Co.* 263 U.S. 413, 416 (1923); *District of Columbia Court of Appeals v. Feldman* , 460 US. 462,476 (1983).

This rule applies even if the underlying issues concern constitutional issues. *Feldman, supra* and *Branson v. Nott*, 62 F.3d 287, 291 (9th Cir.) *cert. denied*, 116 S.Ct 565 (1995).

The inquiry is whether the underlying federal claim involves constitutional claims which are "inextricably intertwined with the state court's decision in a judicial proceeding." *Feldman, supra* at 483 fn 16; *Dubinka v. Judges of Superior Court*, 23 F.3d 218,221 (9th Cir. 1994).

While federal district court's do have subject matter jurisdiction over the constitutionality of a state rule or statute, it lacks jurisdiction to consider the application of the rule or statute by the state judiciary.

It is not the underlying rules or procedures of the state proceedings that petitioner challenges, it is rather the judges abuse of said rules and statutes as a result of judicial bias toward pro se litigants.

For the District Court to entertain petitioner's argument, it would necessarily have to review the substantive state court rulings complained of by petitioner.

D. ANTI-INJUNCTION ACT 28 U.S.C. §2283 REQUIRED DISMISSAL.

The *Anti-Injunction Act*, 28 U.S.C. §2283, provides:

> A court of the Unites States may not grant an injunction to stay proceedings in a State Court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

In *Amalgamated Clothing Workers v. Richman Bros.*, 348 U.S. 511, 515 (1955), the Supreme Court held that the Anti-Injunction Act "... is not a statute conveying a broad general policy for appropriate ad hoc application. Legislative policy is here expressed in a clear-cut prohibition qualified only by specifically defined exceptions."

In *Atlantic C.L.R. Co. v. Brotherhood of Engineers*, 398 U.S. 281, 90 S.Ct. 1739 (1970), the Supreme Court referring to the *Richman Bros.* holding stated,

> Congress has not seen fit to amend the statute and we therefore adhere to that position and hold that any injunction against state court proceedings otherwise proper under general equitable principles must be based on one of the specific statutory

> exceptions to §2283 if it is to be upheld. Moreover, since the statutory prohibition against such injunctions in part rests on the fundamental constitutional independence of the States and their courts, the exceptions should not be enlarged by loose statutory construction. Proceedings in state courts should normally be allowed to continue unimpaired by intervention of the lower federal courts, with relief from error, if any, through the state appellate courts and ultimately this Court. *Id* at 287.

In *Empire Blue Cross v. Janet Greeson's A Place For Us*, 985 F.2d 459 (9th Cir. 1993) the court reversed the district court's order issuing a preliminary injunction enjoining hospitals from pursuing insurers in an arbitration matter. The court held the injunction to be neither expressly authorized by an Act of Congress, nor in aid of the jurisdiction of the district court, nor necessary to effectuate a judgment of the district court, and the injunction thereby was found to be violative of the Anti-Injunction Act.

Similarly, the relief sought by petitioner at the district court level requested injunctive relief for which there is no specified exception articulated and specified by an Act of Congress or found within the Anti-Injunction Act. The relief requested by petitioner is simply unavailable from the federal district court.

While this Court has recognized 1983 actions to be an exception to the anti-injunction statute, it has also "reaffirmed the principles of equity, comity, and federalism that must restrain a federal court when asked to enjoin a state court proceeding." *Mitchum v. Foster*, 407 U.S. 225 (1972)

In *Pulliam, etc. v. Allen*, et al.,466 U.S. 522;104 S.Ct. 1970 (1984) relied on by petitioner for the proposition that the district court erroneously found that petitioner was not entitled to equitable relief, misstates the courts findings. Neither the 9th Circuit Court of Appeals nor the District Court reached the merits of whether petitioner was entitled to equitable relief pursuant to 42 U.S.C. Section1983 as

neither court addressed or determined whether petitioner had an adequate remedy at law . The district court never reached the analysis of whether equitable relief was appropriate because it found, and correctly so, that the court lacked subject matter jurisdiction.

## CONCLUSION

For the above stated reasons, the Petition for writ of certiorari should be denied for want of a substantial federal question.

Respectfully submitted:

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